



July 29, 2014

The Honorable Patti B. Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Guideline Amendment Priorities for 2014-2015

Dear Judge Saris:

On behalf of Prisology, we submit the following comments regarding the Commission's priorities for the 2014-15 Guideline amendment cycle.

1. The Commission should take action to reduce, by two levels, the loss table in U.S.S.G. § 2B1.1. During the 2013-2014 amendment cycle, the Commission focused its attention on reducing penalties for drug offenses because drug offenders make up the majority of the federal prison population. We applaud the Commission for its efforts in this regard, and now ask the Commission to give equal attention to economic crimes. In the wake of economic scandals after the turn of the 21st century, the Commission amended the loss table for economic crimes. This caused sentences for economic offenses to increase dramatically. Many distinguished jurists, scholars, and other persons have come to recognize the unduly harsh results produced by the current § 2B1.1 loss table. In keeping with the Commission's efforts to take steps to reduce prison overcrowding without endangering public safety, We strongly urge the Commission to consider reducing, by two levels, the loss table in U.S.S.G. § 2B1.1.
2. The Commission should also consider reducing the career offender guideline by two-levels. Career offender sentences in certain cases overrepresent the seriousness of individual offender criminal histories. For instance, an individual who commits two felony drug distribution offenses while 18 or 19 years old can be considered a "career offender." Once someone receives a career offender designation, the sentence in the case doubles and triples oftentimes from what the underlying offense calls for. The Commission, consistent with its other federal sentencing reforms, can reduce the career offender guideline by two-levels without endangering public safety.
3. The Commission should amend U.S.S.G. § 2D1.1(b)(1), Application Note 3. The Guidelines currently require a two-level upward adjustment in drug cases "[i]f a dangerous weapon (including a firearm) was possessed." U.S.S.G. § 2D1.1(b)(1). Application Note 3 of § 2D1.1(b)(1) provides that "[t]he enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense." U.S.S.G. § 2D1.1, Application Note 3 (emphasis added). The clear improbability standard required by Application Note 3 shifts the burden of proof for an



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upward adjustment to the defendant to show that the weapon was not connected with the offense once the Government demonstrates that a weapon was present. This skews the proper burden-shifting framework utilized by the Guidelines in comparison to other enhancements. For other enhancements, the burden rests entirely with the Government to prove, by a preponderance of the evidence, that the enhancement is applicable. The Commission should amend Application Note 3 to impose upon the Government, and not the defendant, the burden of showing by a preponderance of the evidence that a “dangerous weapon (including a firearm) was possessed” in connection with the offense.

4. The Commission should eliminate the “cross-referencing” of state law offenses. With greater frequency, defendants are receiving lengthy federal offenses for state law crimes of murder, assault, etc.... The cross-referencing of state law offenses is inconsistent with important federalism principles that our country was founded upon. Persons charged and convicted of federal offenses should not have their federal sentences based on state law conduct that has not been charged in an indictment, proven to a jury beyond a reasonable doubt, or admitted as true as part of a guilty plea.
5. The Commission should eliminate enhancements based on acquitted conduct. While courts have approved of the use of acquitted conduct for sentencing purposes, the notion that a person can receive an enhanced sentence for conduct that a person was found not guilty of is against public policy, and casts the criminal justice system and the Guidelines in a negative light.
6. The Commission should create U.S.S.G § 5D1.4, Early Termination of Supervised Release. As Prisology recounted in its recent testimony before the Commission, very few offenders each year receive early termination of supervised release. This is in spite of the fact that a large number of offenders are on “low-intensity supervision,” a designation only given to persons who have a low risk of recidivism. U.S. Probation resources should be used to focus on supervision cases that require supervision. Currently, the Guidelines address early termination of supervised release in only an application note. See, U.S.S.G. § 5D1.2, Application Note 5. The Commission should dedicate a Guideline specifically to early termination of supervised release, and detail specific criteria courts should consider in determining whether to grant or deny early termination of supervised release.
7. The Commission should expand the criteria for compassionate release currently in U.S.S.G. § 1B1.13. Additional criteria is needed beyond what is presently listed in § 1B1.13 to better implement the compassionate release provisions of 18 U.S.C. § 3582(c)(1).
8. Finally, the Commission should continue its review of other Guideline provisions, and make recommendations to Congress concerning the elimination of federal mandatory minimums, and the “stacking” provisions of 18 U.S.C. § 924(c).

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Brandon Sample". The signature is written in a cursive, flowing style.

Brandon Sample
Executive Director